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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION
HELEN R. PATENAUDE,	:	AND ORDER
RESPONDENT.	:	LS0807072APP
	:	

Division of Enforcement Case No. .07 APP 071

The State of Wisconsin, Real Estate Appraisers Board, having considered the above captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the state of Wisconsin, real Estate Appraisers Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 25th day of February, 2009

Sharon Fiedler
Member of the board
Real Estate Appraisers Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF THE	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
HELEN R. PATENAUDE,	:	AND ORDER
RESPONDENT.	:	Case No. LS0807072APP
	:	

[DOE Case No. 07APP071]

The parties to this action for purposes of §227.53, Wis. Stats., are:

Ms. Helen R. Patenaude
153 N. Main Street #9
Oconto Falls, WI 54154

Department of Regulation and Licensing
Bureau of Business Licensure
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on September 4, 2008, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Mark Herman. Ms. Patenaude did not appear.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Real Estate Appraiser’s Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. It is alleged that: Helen R. Patenaude’s (DOB 11/13/42) last known address of record with the Department of Regulation and Licensing is 153 North Main Street, Apt. #9, in Oconto Falls, Wisconsin. Ms. Patenaude holds a certificate of certification and certificate of licensure as a certified residential appraiser in the State of Wisconsin (#9-932), which was first granted on November 30, 1994.
2. It is alleged that: On November 1, 2005, Ms. Patenaude’s license and certificate to practice as a real estate appraiser were suspended, pursuant to the Board’s Order #LS0411242APP. The suspension was effective for a period of six months but Ms. Patenaude’s license and certificate had expired on January 1, 2006. Ms. Patenaude’s license and certification were further suspended on February 28, 2007, pursuant to the Board’s Order in #LS0411242APP because Ms. Patenaude failed to fulfill other terms of the Board’s Order.
3. It is alleged that: On February 21, 2006, Ms. Patenaude affixed her signature to an appraisal of real property located at 8136 Highway 147, in Two Rivers, Wisconsin. Ms. Patenaude indicated that on the report that she held certification Number 932 of the State of Wisconsin, with an expiration date of December 31, 2007. Ms. Patenaude was paid the sum of \$300.00 by Badger State Mortgage of Waupaca, Wisconsin, for her services.
4. It is alleged that: On February 21, 2006, Ms. Patenaude’s license was still subject to the original six (6) month suspension under the terms of the Board’s Order #LS0411242APP. Ms. Patenaude’s license expired effective January 1, 2006.

5. It is alleged that: On February 28, 2006, Ms. Patenaude affixed her signature to an appraisal of real property located at W3159 State Road, Chilton, Wisconsin. Ms. Patenaude indicated on the report that she held certification Number 933 of the State of Wisconsin, with an expiration date of December 31, 2007. Ms. Patenaude was paid the sum of \$325.00 by Badger State Mortgage of Waupaca, Wisconsin for her services.
6. It is alleged that: On February 28, 2006, Ms. Patenaude's license was still subject to the original six (6) month suspension under the terms of the Board's Order #LS0411242APP. Ms. Patenaude's license had expired effective January 1, 2006.
7. It is alleged that: On July 27, 2006, Ms. Patenaude affixed her signature to an appraisal of real property located at 1600 Hazelwood Drive, Sobieski, Wisconsin. Ms. Patenaude indicated on the report that she held certification Number 933 of the State of Wisconsin, with an expiration date of December 31, 2007. Ms. Patenaude was paid the sum of \$325.00 by Badger State Mortgage of Waupaca, Wisconsin, for her services.
8. It is alleged that: On July 27, 2006, Ms. Patenaude's license and certificate had expired, effective January 1, 2006.

CONCLUSIONS OF LAW

1. The Real Estate Appraisers Board has jurisdiction in this matter pursuant to § 458.26, Wis. Stats.
2. The evidence does not establish that Helen R. Patenaude demonstrated a lack of knowledge or ability to apply professional principles or skills contrary to s. 458.26 (c), Wis. Stats.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that this matter be **DISMISSED**.

OPINION

The Complaint in this matter alleges what is contained in the Findings of Fact, namely that Helen Patenaude practiced as a real estate appraiser with a suspended certificate and license. The Complaint also alleges that she affixed her signature to various documents and was paid a fee for having done three appraisals. As a result, Ms. Patenaude is alleged to have demonstrated a lack of knowledge or an ability to apply professional principles or skills as a real estate appraiser.

However, these stand as mere allegations because they went unproven during the evidentiary hearing in this matter. At the evidentiary hearing, there was no prima facie evidence presented by the Division of Enforcement that supported these allegations. While there were attachments to the Complaint, their origin is unknown and can only be implied. None of the attachments were certified and there was no chain of custody established with respect to them, calling their authenticity into question. As a consequence, it is unknown whether they are legitimate documents upon which one can rely. The attachments were also not offered or received into evidence as exhibits, but were, instead, only attachments to the pleadings.

Ms. Patenaude is alleged to have signed the appraisals in question, but there was no evidence presented that indicated that the signature on the appraisals was, in fact, hers. It was further alleged that Ms. Patenaude received payment for having done the three appraisals, but there was no evidence presented that she actually received any payment from Badger State Mortgage for having done them.

In addition, there was no evidence that Ms. Patenaude had been served with the Complaint, only that it was sent to her last known address. Mail sent to Ms. Patenaude from the Division of Enforcement via both certified mail and by regular U.S. mail was returned. It therefore appears as if Ms. Patenaude may have been unaware of the disciplinary proceedings against her.

Moreover, the pleadings suggest that Ms. Patenaude demonstrated a lack of knowledge or an ability to apply professional principles or skills. However, no causation or connection was made with respect to how, exactly, Ms. Patenaude demonstrated a lack of knowledge as a real estate appraiser or how she failed to apply the minimal professional principles or skills within her field. If, for the sake of argument, Ms. Patenaude practiced as a real estate appraiser without a valid credential, then the cause of action that should have been taken against her would be for unlicensed practice, not for an inability to act professionally. There are no allegations nor is there any evidence to support a finding that Ms. Patenaude

demonstrated a lack of knowledge in applying the principles of real estate appraising or that she failed to do a competent appraisal. Rather, the pleadings suggest that she may have practiced without a valid credential.

Yet the Division of Enforcement is nevertheless seeking to revoke Ms. Patenaude’s credentials based on inferences to be drawn from the Complaint and undocumented attachments whose authenticity is unknown. Such is not a reasonable or a sufficient basis upon which to impose the most severe form of disciplinary action against a credential holder, that being revocation.

The Division of Enforcement is also seeking a default judgment against Ms. Patenaude. Section RL 2.14 of the Wisconsin Administrative Code provides, in relevant part, that if a respondent fails to file an Answer or fails to appear at the hearing, he or she is in default and the disciplinary authority *may* make findings and enter an order on the basis of the complaint and other evidence. (emphasis added)

Making a default finding is discretionary. In order to make such a finding, the respondent either has to fail to file an Answer or has to fail to appear at the hearing. In this case, Ms. Patenaude not only failed to answer the Complaint, but she also failed to appear at the scheduled hearing. However, it appears as if Ms. Patenaude may not have had actual notice of either the Complaint or the hearing date and was therefore unable to respond to the Complaint or appear at the hearing. Additionally, s. RL 2.14, Wis. Admin. Code, provides that while a disciplinary authority may make findings and enter an order, it must be based not only on the complaint but also upon “other evidence.”

Never has the undersigned held an evidentiary hearing in which the Division of Enforcement failed to present a prima facie case against a respondent, even when the respondent failed to appear at the scheduled hearing or failed to answer a complaint. In order to sustain the credibility of the regulatory boards and in order to ensure the integrity of the disciplinary process, it is imperative to present a prima facie case against those individuals who are facing disciplinary action, especially revocation. Attaching documents to the complaint without any explanation as to their origin or authenticity, not to mention their substance, is not a sustainable basis for issuing a disciplinary order, particularly when the respondent may not have had actual notice of either the underlying complaint or the scheduled hearing date.

Helen Patenaude may have practiced as a real estate appraiser without a valid credential. She may have signed the appraisals. And she may even have received payment for those appraisals. But without any evidence to support those claims, neither a default judgment can be made nor a disciplinary order issued against her. Therefore, because there is insufficient evidence to show that Helen R. Patenaude engaged in unprofessional conduct it is strongly recommended that this matter be dismissed.

Dated at Madison, Wisconsin, this 9th day of September, 2008.

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Jacquelynn B. Rothstein
Administrative Law Judge

